



Protocol on Misconduct and Mental Illness

1 Students rights and responsibilities under the university's *Student Code of Discipline*

Students registered with our University are subject to its *Student Code of Discipline*. The code sets out the limits of acceptable behaviour for students of our University and is based on a community model in which members have rights that operate in conjunction with reciprocal responsibilities. These apply to all students regardless of their status. In respect of their obligations relating to conduct, all students are therefore expected to take responsibility for managing their behaviour.

2 Allegation(s) of a breach of the *Student Code of Discipline*

In cases where alleged or suspected misconduct has taken place, the matter will be dealt with under our University's *Student Code of Discipline*. As in Section 1, there are no circumstances in which students can claim immunity from being subject to disciplinary processes.

3 The legal framework; application of the law

Our University's *Student Code of Discipline* operates within the framework of English Law.

- i Statutes and aspects of common law which have particular relevance in this connection include:
 - the principles of natural justice;
 - duty of care;
 - the Health and Safety at Work Act 1974;
 - the Human Rights Act 1998 (HRA);
 - the Equality Act 2010.
- ii Also significant is the contractual nature of our University's relationship with its students in the provision of educational services: if learning opportunities, as contracted for, are allowed to be disrupted or otherwise compromised through student misconduct, our University may lay itself open to a charge of breach of contract.
- iii In applying disciplinary sanctions our University takes due account of its legal duties. In respect of the HRA and principles of natural justice, legal requirements relate to matters of process and the use of those processes.

- iv In respect of our University's duty of care to its students, employees and visitors and the DDA, the picture is less clear. This has partly to do with limited case law in the area; and partly to do with potential tensions between the common law duty of care and contractual obligations on the one hand and the statutory obligations imposed by the DDA on the other.
- v These tensions have particular significance in the case of students with mental health problems. It is not uncommon for a student who has such a disability to come up against employee and student complaints that her/his conduct is 'unacceptable'. Our University as the manager of these complaints has a duty to balance the rights of all individuals concerned, in order to resolve matters fairly and reasonably.

4 **Resolution of complaints in this context**

- i Complaints from students and/or employees may arise from ignorance or from limited understanding of behaviours characteristic of certain types of mental illness.

Misplaced perceptions about high levels of disruption and/or danger created by such behaviours may be minimised by appropriate awareness-raising, allied to a clearly stated University expectation of staff and student attitudes and responses to mental illness.

In respect of the mentally ill student her/himself, our University should ensure that, as far as is reasonably possible, appropriate and sufficient support structures are put in place to accommodate the student's needs.

Such measures should be monitored and their effectiveness evaluated so that, if the situation changes and/or new concerns arise, our University is able to respond positively and re-assess the support and adjustments required.

- ii Conversely, complaints from students, employees, co-tenants and/or others may have foundation, ie such behaviours may give cause for genuine concern that:

university activities are being unacceptably disrupted; and/or student and/or staff safety is at significant risk.

In such cases, in the context of a community model in which all students have agreed to take responsibility for their conduct, it is appropriate for a student exhibiting unacceptable behaviour, irrespective of that student's health, to be subject to the *Student Code of Discipline*.

- iii If, following referral through the operation of the *Student Code of Discipline*, it is known, suspected or becomes apparent that the alleged misconduct has a mental health dimension to it, the member of staff or panel responsible for reaching a judgement in a particular student disciplinary case:

- a) may refer the matter to the Director of Student Services /Senior Student Advisor responsible for co-ordinating support for students with mental health concerns; and
- b) put the *Student Code of Discipline* into abeyance pending a report from the Director of Student Services /Senior Student Advisor.

Although this represents a deviation from the standard university procedure for handling cases of alleged student misconduct, it is not and should not be used to treat the student less favourably. As well as being unfair, to do so may be in breach of the DDA. The purpose of such a referral is to provide additional support to the student earlier rather than later and to enable the authorised disciplinary officers/panels to take informed account of the relevance of the student's mental health to the alleged breach. The member of staff/panel responsible for reaching a judgement in a particular student disciplinary case will be mindful, in this context, of the ambiguities surrounding 'care' and 'control'. Furthermore, in reaching a decision and imposing sanctions, this member of staff/panel must be careful not to exaggerate the degree of risk in the context of a prevailing culture which can stereotype the behaviour of mentally ill people as *essentially* disruptive, violent and dangerous.

- iv In disciplinary cases in which the risk assessment raises the need for emergency suspension and/or permanent exclusion on safety grounds, the justification for the imposition of such serious sanctions should always relate to identified incidents or patterns of behaviour and not to a particular clinical condition *per se*.
- v If the Director of Student Services /Senior Student Advisor and relevant colleagues reach the view that a student's management of their own behaviour could benefit from additional support strategies, the member of staff responsible for reaching a judgement in a particular student disciplinary case may determine that the implementation of these strategies form part of the outcome of the *Student Code of Discipline* process and that the student is accountable for ensuring that she/he makes full and routine use of these support mechanisms as required.

If the student demonstrably fails in this regard, disciplinary sanctions will escalate accordingly. In making judgements about the imposition of serious disciplinary sanctions our University will have due regard to the proper discharge of its duty of care, and of its contractual obligations to our University community.

If a point is reached where all reasonable adjustments have been exhausted and significant risk remains, our University shall consider permanent exclusion of students posing that risk. Such decisions will be taken under the authority of General Regulation 7.2.

5 **Exceptional circumstances**

Notwithstanding the process set out above, there may be exceptional circumstances in which a student's misconduct may be of such an extreme involuntary nature:

- i where they pose such a significant risk to themselves and/or others; and/or
- ii where their state of mind is such that they are unable to engage meaningfully with reality

that our University has no option but to suspend the student as a matter of emergency until such time as the student is able safely to resume their studies.

An appropriate professional clinician, appointed by our University, will determine if and when the student may resume their studies. If or when the student is supported clinically in their desire to return, our University will determine whether it is appropriate to pursue disciplinary charges arising from the misconduct. The student's return to our University may be conditional on their agreement to adhere to a negotiated regime, based on clinical findings and advice. Any negotiated regime of this kind will be concerned with issues of risk; the management of personal mental health; and/or fitness to study.

6 **Experiential learning**

There are some programmes of study provided by our University, which contain a placement element involving contact with young and/or vulnerable client groups. Those students required to have contact with vulnerable client groups as part of their course will have an enhanced duty to manage their own behaviour.

The university has a *Policy, Regulations and Procedures relating to Professional Suitability or Professional Misconduct*. These apply to a specified range of courses, in which, as an integral part of their course, students have significant contact with vulnerable client groups. Where issues concerning professional suitability/misconduct arise in relation to actual or potential mental illness, these will be addressed through the formal professional suitability/misconduct process.